

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER RE SUFFICIENCY OF  
GOVERNMENT'S COCONSPIRATOR  
STATEMENT SUMMARIES**

IVAN CERNA, *et al.*,

Defendants.

The review of the government's coconspirator statement summaries is now complete. As described herein, the government shall please supplement its summaries by **MARCH 30 AT NOON**.

*First*, a number of statements the government seeks to introduce were made by declarants who are not defendants in this action and who have not been identified in prior proceedings as coconspirators (e.g. evidentiary hearings, gang expert *Daubert* evidentiary hearing). These declarants are:

- (1) Carlos Carranza;
- (2) Brian Doblado;
- (3) Carlos Flores;
- (4) Juan Carcamo;
- (5) Juan Flores-Solano;
- (6) Magik;

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- 1 (7) Meow;
- 2 (8) Wilfredo Reyes;
- 3 (9) Camaron;
- 4 (10) Santos;
- 5 (11) Snoopy;
- 6 (12) Cartoon;
- 7 (13) Fly;
- 8 (14) Freddie Martinez;
- 9 (15) Jose Laines;
- 10 (16) Lil Flaco;
- 11 (17) Lil Man
- 12 (18) Ever-Sosa Escobar;
- 13 (19) Osvaldo Fuentes;
- 14 (20) El Cholito;
- 15 (21) Rudy Ventura;
- 16 (22) Marlon Rivera Pistolita;
- 17 (23) Rony Aguilera;
- 18 (24) Rony Avila;
- 19 (25) Manuel Umana;
- 20 (26) Cougar;
- 21 (27) Tweety from LA; and
- 22 (28) Yesenia Perez

23 Although the government will be permitted to establish the foundational requirements for these  
24 declarants' statements at trial, in order to facilitate the orderly progression of trial, the  
25 government must provide additional information regarding these declarants' membership in the  
26 charged conspiracy. The additional information need not be extensive — it will be sufficient for  
27 the government to identify the clique (if any) that the declarant belonged to at the time the  
28 statement was made *or* some description of how the individual was affiliated with MS-13 at the

1 time the statement was made. This information will facilitate the ability of the defendants to  
2 make informed challenges during trial and will provide the Court with context for these  
3 challenges. The government need not produce additional information for those non-defendant  
4 declarants not listed above. For example, although “Memo” is not a defendant in the instant case,  
5 the gang expert evidentiary hearings provided enough information about “Memo” to discern why  
6 the government believes he was a coconspirator.

7 *Second*, there is no declarant identified for statement 402.<sup>1</sup> The government must identify  
8 the declarant for the statement.

9 *Third*, a number of statements (e.g. statements 32, 388) were made by individuals who  
10 allegedly were government informants at some point in time. It is assumed that the government’s  
11 position is that these statements were made at a time when the declarant was *not* a government  
12 informant. The government, however, should immediately notify the parties and the Court if this  
13 is not its position.

14 *Fourth*, there are a number of that do not make clear on what basis the statement may be  
15 construed to be in furtherance of the conspiracy rather than simply being a personal observation  
16 or musing by the declarant. These statements are: 33, 42, 127, 189, 217, 300, 389, 398, and 402.  
17 The government shall please provide additional contextual information sufficient to illustrate its  
18 basis for believing each of the statements was made in furtherance of the conspiracy. Again, the  
19 government need not make a detailed proffer at this time as the foundational requirements will be  
20 established at trial. The government may simply: (1) refer the parties to the recording or  
21 document in which the statement is described; or (2) expand the summary to clarify why the  
22 government believes the statement was made in furtherance of the conspiracy.

23 The summaries are otherwise sufficient and no coconspirator statements will be excluded  
24 at this time due to any purported inadequacy of the summaries. As previously stated, the  
25 government will be permitted to establish the foundational requirements for coconspirator  
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28 <sup>1</sup> The statement numbers listed herein are identified by the numbering used by defendant Flores in the  
sealed exhibit accompanying his motion (Dkt. No. 3121, Exh. A).

1 statements at trial. The additional information to be provided by the government, however, will  
2 facilitate the orderly progression of trial.

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4 **IT IS SO ORDERED.**

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6 Dated: March 16, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE